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Government
Publications

Ontario Municipal Board

Decision

on the

SPADINA EXPRESSWAY

FOR 16 DAYS, FROM JANUARY 4TH, 1971, THE ONTARIO MUNICIPAL BOARD, CONSISTING OF ITS CHAIRMAN, J. A. KENNEDY, Q.C., AND MESSRS. W. SHUB AND R.M. McGUIRE, HEARD THE CASE FOR AND AGAINST THE SPADINA EXPRESSWAY.

ON FEBRUARY 17TH, 1971, THE O.M.B., BY A SPLIT DECISION, APPROVED THE SPADINA EXPRESSWAY, CHAIRMAN KENNEDY DISSENTING.

REPRODUCED HEREIN ARE THE THREE OPINIONS, IN THEIR ENTIRETY, PRESENTED AS A PUBLIC SERVICE BY THE SPADINA REVIEW CORPORATION.

THE ONTARIO MUNICIPAL BOARD

IN THE MATTER OF:

The Municipality of Metropolitan *Toronto*
Act (R.S.O. 1960, c. 260), and

Section 64 of *The Ontario Municipal Board*
Act (R.S.O. 1960, c. 274),

and

IN THE MATTER OF an application of The Municipality of Metropolitan Toronto for approval of

- (a) the construction of the Spadina Expressway extending from Bloor Street in the City of Toronto through the Village of Forest Hill and the Township of York to a connection with Wilson Heights Boulevard near Clanton Park Road in the Township of North York, with provision for future rapid transit facilities and all related works and undertakings, at an estimated cost of \$74,680,000.00, and
- (b) the borrowing by the Metropolitan Council of such sum repayable over a term not exceeding twenty years for the purpose,

AND IN THE MATTER OF an application by Annex Ratepayers Association and eleven other ratepayers' associations and the owners of certain apartment buildings for a variation or rescission of the orders of this Board made herein on the 24th day of June, 1955, the 21st day of January, 1958, the 22nd day of August, 1960, the 7th day of August, 1963, the 3rd day of June, 1965, and the 8th day of December, 1967,

AND IN THE MATTER OF an application by The Municipality of Metropolitan Toronto for approval of:

- (a) the extension of the limits of the William R. Allen (Spadina) Expressway southerly to Bancroft Avenue in the City of Toronto,
- (b) the additional expenditure of \$66,320,000.00 for the undertaking and the borrowing of money and the issue of debentures repayable for a term not exceeding 20 years to provide the said additional amount, and

(c) the construction of those parts of the Rapid Transit Line that have to be constructed simultaneously with the said Expressway and the acquisition of lands therefor at an estimated cost of \$26,000,000.00 and the borrowing of money and the issue of debentures repayable over a term not exceeding 30 years for the said purpose.

COUNSEL:

A.P.G. Joy, Q.C., and
Kenneth F. Christie – for Municipality of
Metropolitan Toronto

J.J. Robinette, Q.C.
A.J. Lenczner and
J. Sack – for ratepayers'
associations

David C. Lyons and
Marie Corbett – for City of Toronto

J.H. Boland, Q.C. – for Borough of York

O.R. Chapman,
C.E. Onley, Q.C., and
Ronald King – for Borough of North
York

H.H. Wengle – for Cedarvale Rate-
payers' Association

DECISION OF THE BOARD

The Ontario Municipal Board by a majority decision, the Chairman dissenting, has dismissed the application herein for variation or rescission of this Board's orders herein and has granted the application by the Municipality of Metropolitan Toronto thirdly above styled. The reasons for decision by the Chairman and the two Vice-Chairmen who conducted the hearing follow.

DATED at Toronto this 17th day of February, 1971.

M. FRASER
ACTING SECRETARY



J.A. KENNEDY: There are some extremely unusual aspects of this application which distinguish it clearly and substantially from almost any other application which has come before this Board in recent years. The difference on many aspects is perhaps one of degree but the cumulative result is to set this case very much apart from most others.

To begin with an application was made to this Board in 1963, more than seven years ago, for approval of the construction of a Spadina Expressway and some facilities needed for a rapid transit line at an estimated cost of some \$76 million. Approval was granted at that time and in the intervening time approximately that amount has been spent to construct about one half of the planned facility. The estimated cost now for the expressway, exclusive of the rapid transit is \$142 million. A great part of the increased cost is inflation including greatly increased land costs, the balance being the result of some improved facilities often referred to as "extras".

By the time in 1969 when the metropolitan council "ran out of money" that had been approved a great many important factors had changed in six intervening years. Experience with expressways, especially those cutting through built up areas as this one will do, amounted in a word to disenchantment. The almost cruel social cost in terms of disruption of established communities seemed to engender growing opposition and resentment on the part of those citizens "down stream" who did not require the transportation but were asked to tolerate the invasion. The danger and especially the fear of air and noise pollution heightened opposition and assisted in the organization of those opposed.

Spiralling costs and the ever increasing congestion of traffic on downtown streets provided impetus as well as ammunition for those, ever growing in number, who feared irreparable damage to important sections of the community if the trend of expressways, already seriously discredited, were not arrested.

In the face of this mounting opposition and steadily spiralling costs, Metro Council decided in September, 1969, to halt construction and review the project by obtaining up-to-date studies and by hearing in its traffic committee representations by citizens for and against the project. These studies consisted of a functional design report by the Roads and Traffic Department and a planning review and appraisal by the staff of the Metropolitan Planning Board. When these studies had been received and reviewed and when the hearings before Metro Council's traffic committee had been conducted, Metro Council decided to apply to this Board for approval of an increased expenditure. In the meantime, organized ratepayers opposed to continuing the expressway had retained legal counsel and applied to this Board for a review of the approval given in 1963.

Some indication of the change in public attitude with respect to this project from 1963 to 1971, a period of less than eight years, can be gleaned from the fact that the 1963

hearing lasted one day and the 1971 hearing now concluded lasted 16 days. No one who attended the hearings would suggest for a moment that the opposition to this project is based either on emotion or lack of realism. Extremely capable counsel presented a case through competent witnesses and able argument. Serious and soundly based criticism has been placed before this Board for consideration not the least of which are resolutions by Toronto City Council.

I may say it is a source of considerable regret that I find it impossible to agree with the conclusion reached by my two learned colleagues. I take comfort, however, in my belief that it is a measure of the value and strength of a tribunal if its members are able to disagree on important and difficult matters such as this one. This must demonstrate beyond all doubt that both sides have been fully studied and considered in all their aspects.

The first question to be considered is whether it follows necessarily that because an expressway in what is known as the Spadina or north-west corridor was approved in 1963, only the question of additional cost and the ability to meet that cost should be considered today. This application, of course, is made under Section 64 of *The Ontario Municipal Board Act*.

Section 62 of that Act reads as follows:

" 62. *The Board, upon any application of a municipality for approval of the exercise by a municipality of any of its powers, or of the incurring of any debt, or of the issue of any debentures, or of any by-law, shall, before approving the same, make such inquiry into the nature of the power sought to be exercised or undertaken that is proposed to be or has been proceeded with, the necessity or expediency of the same, the financial position and obligations of the municipality, the burden of taxation upon the ratepayers and into all other relative matters, as in the opinion of the Board may appear to be necessary or expedient."*

And Section 68 provides:

" 68. *The Board is not required to give its approval on any application made to it under section 64, and shall not give such approval unless satisfied that the same is justified under all circumstances."*

From this it must follow that it is the duty of this Board to be satisfied about the necessity and expediency of this project under the circumstances and accepted criteria as they exist today, not as they existed in 1963, eight years ago.

I have said in past decisions that this Board should not presume to interfere with the exercise of discretion by local elected representatives within the limits of power conferred upon them by the Legislature without some cogent reason, some serious reason for so doing. In my opinion there are cogent reasons, serious reasons for so doing in this case.

I do not believe that citizens have a right to overrule their elected representatives, but I do believe this Board has

a duty to intervene in cases such as this one.

At the hearing counsel for the Metropolitan Council called seven witnesses to establish his case in chief. Two further witnesses were called in reply on the question of air pollution but as will appear later this question should be considered in a somewhat different category. The seven witnesses were:

- 1: Samuel Cass, Metropolitan Commissioner of Roads and Traffic.
- 2: W. Wronski, Metropolitan Director of Planning.
- 3: R.M. Bremner, Commissioner of Works and City Engineer for the City of Toronto
- 4: Joseph Eakin, Metropolitan Finance Commissioner.
- 5: W.R. McDougall, a traffic engineer and a partner in Kates, Peat, Marwick & Co.
- 6: Alan M. Voorhees of Washington, D.C., a traffic and city planner and an authority on traffic planning recognized internationally.
- 7: W.H. Paterson, general manager of subway construction for the Toronto Transit Commission.

There is no question that the evidence, especially that of Mr. Bremner who filed an extensive report he had made to city council on the expressway, demonstrates some traffic congestion on arterial roads serving this north-west corridor and considerable filtering of arterial traffic onto residential streets, notably a part of Forest Hill Road and Poplar Plains Drive in the St. Clair Avenue region.

Mr. Voorhees gave it as his unqualified opinion that there is sufficient, perhaps ample, traffic in the corridor to justify the expressway. Both he and Professor Nowlan, the latter called by Mr. Robinette, stated that the expressway would generate additional traffic in the corridor and would attract traffic from arterial roads at the start but some of this in time would gravitate back to the arterial roads. The evidence also was that the trip time downtown would be speeded up by this new facility and while it was not mentioned at the hearing it seems only reasonable to assume that, since at least the same traffic will be emptying onto the downtown streets in a shorter period of time, this will add to the present congestion on downtown streets during the morning rush hour.

There is strong evidence that to intrude this expressway into the developed residential areas will harm these residential areas by uprooting the homes of residents who want to remain where they are, by increasing pressures for high density development on good quality areas of low density residential development and by destroying a very considerable amount of the natural beauty in ravines. This Board has opined in past decisions that these ravines reaching like fingers through the metropolitan area are a priceless heritage deserving strong efforts for their preservation. Also this Board has acted more than once to protect these residential areas "close in" from the pressures of high density development. Indeed these nodes or enclaves of residential development near the heart of the city are recognized by persons knowledgeable in planning as perhaps unique on this continent for a city of this size. It would be a pity indeed, or even worse than a pity, not to protect them.

Of course, there is a general principle that the needs of the greatest number must prevail. The fundamental duty of

government is to protect the greatest common good. But these needs should prevail over minority and individual rights and interests only if the project proposed in the public interest can be justified and supported. In my respectful opinion this proposed expressway cannot be justified or supported without further study.

The first obstacle in the path of this whole matter is the failure by the Metro Council to adopt an official plan as provided for in the 1953 statute establishing the Municipality of Metropolitan Toronto. The Metropolitan Planning Area includes not only the Metro municipalities but includes also a number of municipalities on the fringe. Mr. Wronski gave as the reason for the failure to adopt an official plan that some of these outside municipalities objected to a Metro plan governing their land use. It is strange indeed that this Board has been calling on the Metro Council for several years to adopt an official plan in accordance with the statute and this is the first time this explanation has been offered to the Board. Be that as it may, this explanation is hardly a reason because many planning areas in Ontario have an official plan covering only part of the area and if indeed legislation was needed for a partial plan it does not appear the Legislature was ever petitioned for the necessary legislation — as Mr. Robinette put it, in their "annual" amendment. And it must be clear that if the Metro Council had sought approval of their plan when it was ready five years ago, the question of the Spadina Expressway would have been fought out then and, what is most important, in the proper context, in the proper background of an official plan which would settle land use and development densities.

As witness after witness stated at the hearing, land use, development densities and transportation routes are all a part of the same problem, are interrelated, go hand in hand. In my respectful opinion less than adequate planning is not acceptable for this extremely important part of the Province of Ontario.

Then there is the somewhat unusual matter of the Kates, Peat, Marwick & Co. 1995 Travel Demand Study, not put in as a part of the Metro case but introduced by Mr. Robinette during cross-examination of Mr. Cass on the second day of the hearing. This report was transmitted to Mr. Wronski by Kates, Peat, Marwick & Co. on March 30, 1970, in a letter of transmittal, marked "private" for some unexplained reason. Mr. Wronski said this report had been received in March, 1970, and had not yet been forwarded to Planning Board or Council and that his staff is working on or studying it still. The paragraph in the letter of transmittal to which special attention is called reads as follows (at page 5):

"Commensurate with this high utilization is an expected overall reduction in level of service on the road system. The average travel speed on the road network in 1995 is expected to be 12 miles per hour and the average trip 56 minutes, as compared to 17 miles per hour and 29 minutes in 1964."

Later in the same report (at page 6) this company states:

"In view of the relatively low density nature of trips generated by the restricted urban development

area plan in these travel corridors, it would be necessary to provide concentrations of high density development and high quality feeder services to effectively shift these road traffic overloads to public transit."

There is no evidence that Metro Council even saw, let alone considered, either of these severely critical comments. When faced with this report on the stand on January 5, 1971, Mr. Cass said:

"I have not examined it. This is the first time I have seen it."

There is no reason to blame Mr. Wronski personally but one wonders just what was the reason for insulating council, planning board and particularly Mr. Cass from these findings which must call into clear focus the basic question whether the "balanced" programme (balanced between expressways and public transit) selected in 1964 should be now followed to the extent of building even one more expressway, especially when that expressway will cut through the City of Toronto.

Just here, on the point of paying attention to elected representatives, a traffic facility of this nature, referred to as "dump and drain" has many of the features of drainage and might be examined in the light of some of the principles of drainage law. In drainage law those upstream have the right to an outlet for water and those downstream have a right to be protected from undue damage from the way in which drainage outlet is achieved through drainage works. To continue the simile the councils of North York and York are the owners upstream and favour the expressway, as North York Alderman Schindeler put it in his evidence before the Board:

"They supported this because they never had any alternative and anything is better than nothing."

On the other hand Toronto City Council, the 'downstream' owner, even in the face of a report of the city engineer, R.M. Bremner, which supports the expressway to the point of vigour, passed the following resolution on April 30, 1970:

"It is recommended that the City of Toronto, prior to any approval being given to the (Spadina) expressway and rapid transit system, request the Metropolitan Council to establish an independent inquiry of one or three commissioners to conduct an inquiry regarding the desirability and/or necessity of constructing the expressway and rapid transit system; that this commission report to the Metropolitan Executive Committee by September 30, 1970; and that representatives of City Council be permitted to make a presentation to the Metropolitan Transportation Committee when it considers this request."

By a further resolution passed on May 27, 1970, City Council advised the Metropolitan Council as follows:

"It is the position of the Council of the City of Toronto that the negative aspects of the impact of the proposal for the construction of the (Spadina)

expressway require further in depth study in relation to the following subject matters:"

There followed in the resolution a tabulation of the following points:

1: Noise, vibration and air pollution.
2: Effects on potential and existing park lands including ravine.

3: Economic and sociological effects by dislocation of people and commerce both during and following construction.

4: Influence on the demand for downtown parking and planning and economic consequences of providing additional spaces.

5: The direct and indirect operating costs of the project.

6: The extent that functional efficiency is dependent upon a system of expressways.

7: Adequacy of functional design in relation to effects on existing street system.

These followed a series of expressions of concern on the part of the city council relating to the very points of concern and apprehension expressed by a large number of ratepayers who spoke at the hearing before this Board and coinciding precisely with the case put forward by Mr. Robinette on behalf of the ratepayer organization.

But to come back to the Kates, Peat, Marwick report. Mr. Robinette asserted with strong emphasis in argument that the decision of Metro Council to build the expressway should not be supported until further study had been made because council was not aware of the deterioration of service foretold in that report. In rebuttal Mr. Joy referred to Table 4 in the Planning Review and Appraisal made by Mr. Wronski and his staff in February, 1970, (Exhibit C6) and which was before Planning Board and Metro Council prior to the decision to go ahead. It is true that Table 4 does show a reduction in average speed between 1964 and 1995 from 17 to 12 miles per hour and an increase in trip time during the same period from 29 to 56 minutes. But in the text of his report, which laymen must be expected to accept, Mr. Wronski discusses in this context operation of the designed expressways "at or above their practical capacity" in language which would not indicate to laymen on the council the full impact of the Kates, Peat, Marwick report itself.

It must be obvious that when expert prophesy is that design capacity will be overtaxed to the point of doubling trip time and reducing speed to 12 miles an hour the question of expressway or public transit becomes a serious one indeed. Add to this the scarcity of the capital dollar to provide these facilities which is admitted or proven on all sides by everyone from municipal financier to taxpayer and you have an urgent situation amounting really to a civic crisis. The situation simply cries out for an agonizing reappraisal.

First, in this background, consider the question of simple logistics. The battle against foretold serious traffic congestion and the limits imposed by scarcity of the tax dollar must be treated basically as one of logistics. How many square feet of highway space at what speed is

required to transport persons in a private automobile? How many persons are transported in the same space at the same speed in public transit? The comparisons must be made at the rush hour because that is the time at which the need is shown. If the facility will serve at the peak then, of course, it will serve below the peak.

One comparison is that the Spadina Expressway's design capacity will accommodate 5600 automobiles in one hour. Applying the statistical factor of 1.3 persons per auto this means 7480 persons an hour. The working statistic is that 40,000 persons an hour are transported by rapid transit. Of course, one must not accept one factor as decisive until the others have been checked. In my respectful opinion two other factors are basic and must be studied carefully before any conclusion would be justified. The first is the question of cost. A study must be made to determine the actual total comparative cost per mile and per passenger carried of expressway as against public transit. This means the total cost to the provider and the user and into this, of course, one must fit an equitable fare charged to transit riders. But, of course, in such a study one will meet full face the basic truth that fare box revenue must no longer be a decisive element in such a study. At least in communities of higher density population the movement of persons and goods is a social, community need, quite as much as water, sewers, libraries, police protection. The day when public transit pays its own way out of the fare box is long gone, a truth already recognized by government at every level.

Once one admits this truth, and nearly everyone does, then it follows that the fare box must not dictate the level of service to be provided by public transit. If indeed a study as suggested demonstrates that public transit costs less, the comparative figures will assist in determining how much more can be spent than at present in making public transit more attractive to the potential rider — such as improvement and catchment in feeder lines and general quality of service and appointments.

Professor Nowlan, who was called by Mr. Robinette, professionally well qualified in traffic planning and with some international experience of a practical nature, favoured the making of such a comparative cost study. Mr. Voorhees, called by Mr. Joy and an authority in traffic planning well recognized internationally, agreed with me that such studies are being made much more frequently and also agreed that such studies are basic. Professor Nowlan's opinion was that with most of the work done such a study should take two months. Mr. Voorhees thought longer because much of the information already gathered would have to be checked but Mr. Joy and Mr. Robinette agreed that his opinion as to the time required for the study would be fourteen months.

Closely allied to this is the second question to be studied as to other measures available to increase passenger volume on public transit to reduce traffic demand for expressways.

The February 1970 Planning Review and Appraisal of the Spadina expressway and rapid transit line appears throughout to accept the amount of private automobile traffic as determined by the number of those who prefer to enter the central business district (the CBD) by private automobile. In other words, the public is to be given a

choice and you must plan for the number who wish to drive to work or business in their own automobile. There was some suggestion at the hearing that because this is not Russia this must be so. Anyone who makes that suggestion unconsciously avers that only an absolute dictatorship can deal with crises and emergencies. To make such a pronouncement would be to depart from reality, from experience.

Citizens cannot be given a choice whether to defend their homeland. They cannot be given a choice as to the speed at which they will drive their autos on a public road. The list of further examples is a litany. Machines are made to serve man, not man to serve machines, regardless of whether the machine is an automobile or a computer. Surely democracy does not dictate that an expressway must be cut through quiet development in a city if that expressway will not solve the problem, especially if another solution can be found that will.

To come back to the Kates, Peat, Marwick report on 1995 traffic demand. In Table 2 of that report these consultants show that in 1995 with a daily downtown parking cost of \$1.25 there would be 166,000 auto drivers and passengers and 123,000 transit riders coming into the core but with a daily parking cost of \$3.10 the number of auto drivers and passengers would drop from 166,000 to 127,000 and the number of transit riders would increase from 123,000 to 162,000. The demand for downtown parking spaces is seen as likewise reduced from 133,000 to 100,000. It might be noted here that these figures were not known to Metro Council or even to Mr. Cass prior to the hearing before this Board.

There was evidence at the hearing that in New York methods are being tried out to increase surface transit speed by isolating surface vehicles from other traffic and attention is given in other ways to reduce vehicular traffic. A study of this phase of the problem is also clearly indicated as needed.

As noted earlier one outside consultant was called as a witness on behalf of the applicant, Alan M. Voorhees, an expert on traffic planning from the United States who is widely recognized internationally as an authority in his field. For example, he left after his appearance before this Board to go to continental Europe to advise a national government on traffic planning there. During cross-examination of this witness Mr. Robinette brought up a paper the witness had delivered at a conference of a Town Planning Institute in England in 1968. Many of the reasons for the decision which I reached are found in that paper. These opinions the witness acknowledged while he was on the stand:

"In fact it appears that in our large cities it is very difficult to reduce congestion in the highway field by providing new facilities. This is particularly true at the peak hour."

.....
"What this really means to us is that for cities of 1,000,000 we just can't build enough motorways." (On this continent one would say "expressways").

"How good is the transit service in the area? The better the transit service, the less need for the car."

.....

"We both must find a way of providing good transportation service for peak hours as well as off peak hours. This appears to lie in the realm of extensive improvements in our public transport systems with development of a motorway system which can take care of our basic needs but not necessarily our peak needs." (Note: The evidence called by the applicant showed a present need at the peak hours only.)

.....

"We are hoping to develop new facilities which will bring down travel costs to a degree where the total cost of the transportation system is lower than it is today. I think this is possible but it ignores a very critical issue — the social costs of providing extensive highway systems in urban areas. It would appear from the public reactions to the motorway systems we are building in urban areas that the social costs indicate that the motorway system should be cut back 30-40% over the solutions that are justified on just construction and operation costs alone. Thus the freeway spacings listed in our graphs reflect those which are justified if social costs are not considered. They are too high if you are building in built up areas because they ignore social costs, but they may be appropriate for new areas where you are laying out the development in the beginning and co-ordinating it with motorway development."

.....

"We are now attempting to co-ordinate very closely the development of these local (transport) distribution systems with the land use activities in these areas, since we know from our research that this is often where our plans in the past have fallen down. They have made the automobile too convenient in contrast to the public transport system. Therefore, if we are going to provide a public transport system that will be attractive, walking distance to it and other design features will have to be such that they will compete with the automobile."

.....

"First of all we feel that the development unit of one hundred thousand people is a logical building block for our metropolitan areas. Second, that these development units should have a complete spectrum of people from all walks of life. Third, that public transport should be co-ordinated with high density areas. Fourth, that highway service should be concentrated in the lower density areas."

After a discussion among those attending the conference, Mr. Voorhees is reported to have said that planners had to judge how to balance the benefits derived from a motorway system against the social costs involved in

building it. Mass transit systems, he said, had to be stressed much more effectively: areas had to be redeveloped so as to fit in with the transit age rather than with the motor age.

In my respectful view these opinions expressed by this world traffic planning authority whom the applicant called to convince this Board are sufficient in themselves to warrant further study before spending another \$75 million as well as incurring the frightening social costs discussed earlier in this decision.

Considerable evidence was given at the hearing about the dangers of air pollution by carbon monoxide from centering a large amount of traffic on one road, through a built up area on a depressed road bed. Witnesses were called in reply by Mr. Joy from the Air Management Branch of the Department of Energy and Resources Management. These witnesses in their evidence indicated there would be no danger to human health from the planned operation of the expressway. The Legislature in its wisdom has consigned responsibility for this subject to that Department and this Board should not interfere except in very clear circumstances which do not exist in this case.

There was evidence at the hearing indicating strongly that this alignment is not the correct alignment for a rapid transit line in this corridor. The suggestion is that rapid transit facilities should be aligned where there is existing surface public transit as indicating need and probable volume of patronage. Examples in support are cited in Toronto. The Yonge Street subway and the Bloor-Danforth subway are cited as examples of well patronized rapid transit which replaced heavily patronized surface transit while the University subway is cited as one which did not replace a surface transit line and which is very poorly patronized. Evidence from the Toronto Transit Commission on this question is minimal. Mr. Paterson said the Toronto Transit Commission is attracted to this alignment by the calculated saving, some \$10 to \$20 million. He said if the expressway were not to be built on this alignment the Toronto Transit Commission would take a "hard look" to determine where the rapid transit line should be.

A member of the Toronto Board of Education appeared in the name of the Board to oppose construction of the expressway. Her real complaint was that the Board of Education had not been consulted about the matter as a board although there is reason to believe the expressway may cut through some school districts and perhaps interfere with the school operation. This would appear to be something on which the Board of Education should be consulted.

One final point that should be mentioned has to do with the present jurisdiction in Metropolitan Toronto with respect to transportation and traffic. Until now public transit operation has been under the control of an appointed commission and until recently elected members of council were not eligible for membership on the commission (T.T.C.). Legislation enacted at the last session provides that some or all members of the commission may now be appointed from among elected members of council. This would appear to be a move in the right direction.

With each passing year social and economic factors throw public transit and private passenger movement more

and more into the same area of responsibility and administration. Cost of highways and transit and the portion of the cost of construction and operation to be recovered respectively from fares and from taxes are even now really all a part of the one problem. Insulation of responsibility by division among two or more separate authorities can only aggravate the problems and perhaps put desirable solutions beyond reach. A new set-up whereby all aspects of local transportation can be brought under at least a single advisory jurisdiction would appear to be long overdue. The fact that evidence of this need is now mentioned at the municipal level is, of course, encouraging.

For the foregoing reasons approval of this application should be withheld until a proper study has been made including a study of the comparative cost of expressways and public transit, including rapid transit, as well as a study of measures that can be introduced to increase transit use by limiting access to downtown by automobile, and a study to show specifically the amount of automobile traffic to downtown that can be eliminated by increasing use of public transit along the lines discussed in this decision. On the ratepayer application for review further work should be stayed pending further order of this Board after those studies have been made.

W. SHUB: This application was made necessary because of the requirement of an additional expenditure of \$66,320,000.00 for the William R. Allen Expressway, and the sum of \$26,000,000.00 for the Rapid Transit Line in conjunction therewith. By a decision of this Board dated August 7, 1963, approval was given for the construction of the expressway with provision for future rapid transit facilities in the sum of \$65,980,000.00 Previous orders of the Board dating back to June 24, 1955, had already approved expenditures totalling the sum of \$7,700,000.00 It is suggested by counsel for the applicant that the present application is due partly to a change in design of the works and partly as a result of inflationary property values and other costs in the interim period. A perusal of the Board's decision of 1963 would indicate that it was recognized that there would be design changes "when better facilities for the movement of traffic at the southerly end can be constructed". Indeed, if this application is approved, it will still be necessary to make further applications to this Board for the additional rapid transit costs, now contemplated at \$69,000,000.00 The total expenditure incurred to the end of 1969 was \$65,500,000.00. The expressway is presently operating from the northerly limit at Clanton Park Road to Lawrence Avenue. The section between Lawrence and Eglinton Avenue has been almost completed. In addition the design for the tunnel section in the Cedarvale Park area has been completed. I find nothing unique in an application affecting an undertaking of such magnitude for an expenditure of additional moneys, particularly when the history of the project is considered. The expressway which will hereinafter be referred to as the Spadina, has had a long and tortuous background. I do not intend to relate the detail, which may be found in "A Planning Review and Appraisal". (Exhibit C6). Suffice it to say that the idea was germinated as early as 1929 when it was recognized that there was a need to provide a highway between the growing north-west area and the centre of the city. This background, when taken together with the actual Board approval in 1963, assumes some importance in my opinion, when considering the lack of an official plan for Metropolitan Toronto discussed later in this decision.

This application is somewhat unusual inasmuch as approval for this very project had been obtained in 1963. The need for the work was enquired into at that time and were it not for the additional expenditure required and perhaps the very strong opposition that has developed within recent years, a further hearing, in my opinion, would have been unnecessary. However, in the circumstances, it would appear that the Board would have jurisdiction to enquire into those matters specified in Section 62, having regard also to Section 68 of *The Ontario Municipal Board Act*. Since the Board has power under Section 62 to enquire "into all other relative matters, as in the opinion of the Board may appear to be necessary or expedient", it is not inappropriate to consider the effect of Board approval in 1963, from the standpoint of reliance by the public on the final completion of the Spadina project, as well as the possible consequences if the Spadina is now left in limbo.

The concerns of the proposed Spadina Expressway, planning-wise, were expressed in a report dated October 13, 1961 (Exhibit C41) by M.V. Jones, the then Commissioner of Planning for Metropolitan Toronto. This report dealt with the "implications of the proposal insofar as land use, community structure and other planning elements are concerned". The proposed Spadina Expressway and Rapid Transit then considered was based on the original functional plans for this facility prepared by the Planning Board as early as 1956. There was then, as there is now, a concern for the side effects of this proposal. Among the many considerations at that time was the effect on built-up residential areas, the Cedarvale Park, the Nordheimer ravine and the area south of Davenport Road.

It was recognized then that the instant proposal was unlike the Don Valley Expressway and the Gardiner Expressway, which would provide minimal interference with residential development. This report was adopted on October 18, 1961, by the Metropolitan Planning Board. Although there is far greater opposition upon the application now before this Board than in the 1963 hearing, I cannot accept the argument that with respect to considerations as to the possible destruction of neighbourhood communities, a sufficient study had not been made and that there was not a full appreciation by council when the project was first launched, of the possible resultant deleterious effect upon such communities. In my opinion, therefore, the Board ought to decide whether this rather serious aspect of the work was given due and proper consideration in the calculations of council when considering the need for such an undertaking.

I wish to deal now with the report by Metropolitan Toronto Planning Board on the Metropolitan Toronto Transportation Plan (Exhibit C30 – dated December 1964 [after 1963 hearing]). This report contains findings arising out of transportation research studies carried out over a period of years and was submitted to facilitate consideration of the proposed official plan. The draft official plan of the Metropolitan Toronto Planning Area was issued in January 1960 showing development of the region over a 20 year period. Transportation was naturally one of the considerations, and alternative transportation systems were considered. It was recognized that "no transportation plan can at any time be considered as final". This report relates density of development to the choice of travel mode as between public and private transportation. It is assumed that the greatest concentration of employment will be within the central business district, with increasing employment opportunities in other parts of the planning area. The objective is "to facilitate maximum accessibility between residential and employment areas and to ensure maximum choice for the wide variety of job requirements of the resident population."

This report indicates that road and transit proposals were under consideration by various agencies even prior to the establishment of the municipality of Metropolitan Toronto in 1954. Amongst other proposals the Spadina Expressway and Rapid Transit Line was adopted by the Metropolitan Council. Among the conclusions arrived at is a finding that a "balanced" transportation system would best

serve the need of the community. The limits of the expressway system appear to have been fully recognized. If one is to adopt the conclusions of this report, the emphasis made by those in opposition, on a rapid transit system without the inclusion of the expressway would have to be discounted.

That "no transportation plan can at any time be considered as final" is clearly demonstrated by the 1995 Travel Demand Study prepared for the Metropolitan Toronto Planning Board (Exhibit C34) by Kates, Peat, Marwick & Co. This study paints a sombre picture of traffic conditions in the metropolitan area and beyond by 1995. It presupposes the existence of the subject facility. If the basic presumptions are sound, there will undoubtedly have to be further studies to ameliorate the possible traffic congestion by that time. If then, the predictions are sound, should the Spadina project now be nipped in the bud awaiting these studies? These prognostications would have less foundation by redirecting land use development and taking municipal and provincial political policy decisions. To the extent that this document will force such decisions, this report should be considered useful. In my opinion, however, to stop the project solely because further studies based on certain premises might be suggestive of the abandonment of the Spadina project is not a realistic approach. It would, I believe, stultify the whole transportation planning process. In a quickly changing society and economy, it might always be argued that any proposed plan has already become obsolete — and overcaution might halt any progress and create a condition of stagnation.

In my view, it is incumbent on this Board to consider need. This involves a consideration not only of the advantages that will be derived from the works, but the disadvantages followed by a careful deduction as to the net credit or debit balance. When considering need, if the Board is of the opinion that studies are inadequate to warrant implementing a project, it certainly should not be approved. The author of the 1995 Travel Demand Study, William McDougall, stated that this report is an interim document and indicates that the Spadina project should be built and that it does not require construction of a cross-town expressway. In his opinion, the expressway is necessary because it would serve the regional network in both directions. This witness places a high priority on this particular project and believes that the combined expressway and rapid transit is logical to undertake and that the rapid transit facility is necessary to serve the Spadina aligned corridor and would relieve the Yonge Street subway.

I have given consideration to the Central Area Transportation Study for Metropolitan Toronto (Exhibit C39) made in March 1968 by Reed, Voorhees & Associates Ltd. and Alan M. Voorhees & Associates Inc. — an internationally recognized firm specializing in urban transportation. The very first paragraph in this study is deserving of quotation.

"Metropolitan Toronto is potentially one of the great cities of North America. With its history of municipal government reform in recent years, the possibility of

a renaissance of development in the core, and the unique esteem of the public transportation system, Toronto may become a model for North American cities. Good transportation planning can help achieve this. This intensive study of transportation requirements for central Toronto can be the starting point for this renaissance."

This report recognizes the need to retain the prominence and vitality of the central core and the transportation systems recommended are those which in the opinion of the author are consistent with the objectives desired to be attained. To this end, it is suggested that "the cost, inconvenience and hazards of the journey to work should be minimized, and there should be a maximum choice of travel for persons and goods. It is suggested that the Spadina Expressway is first in priority among the freeway proposals. It serves a dense corridor with a specific tributary area which cannot be serviced by any other route."

Completion of the Spadina enterprise is necessary having regard to traffic requirements in the very near future. This suggestion of immediate need, in my view, cannot be overlooked. Any suggestion of delay awaiting further reports, which in the opinion of one of the witnesses, Alan Voorhees, might very well be fruitless and costly, would perhaps jeopardize the orderly development of a great metropolitan centre and be punitive to those who rightfully expect and deserve this kind of facility. Even though the Voorhees study places great emphasis on the need for this expressway, it does not overlook the need for improving and extending the rapid transit system. The Spadina rapid transit is recommended because it would relieve the Yonge Street line and further utilize the University line. Top priority is therefore given to the Spadina rapid transit line.

One of the consequences arising out of the expectation that Spadina would be allowed to proceed was that the Department of Highways designed Highway No. 401, assigning a certain volume of traffic to be handled by the Spadina and in reliance upon this work did not construct full interchanges at Bathurst or Dufferin Streets. In fact an agreement between the Department of Highways and the applicant (Exhibit C10) was entered into affecting the Spadina Road Interchange, dated November 5, 1963 (after the 1963 Board decision). In addition, as previously stated, the work which has proceeded to Eglinton Avenue has caused the demolition of numerous homes with displacement of people.

Since the Spadina was never intended to terminate at Lawrence Avenue and evidence disclosed the very heavy volume of traffic now using this portion of the Spadina, spills out on a large residential area south of Lawrence, it must be concluded that those residing within this area are presently put to great inconvenience and suffer a lack of enjoyment of residential amenities because of the present plight of the Spadina. It would be a fair assumption that these conditions are being tolerated only in the belief that the extension of the expressway will bring relief.

Another point of concern to me is that within the vast residential area affected by Spadina traffic, great reliance must have been placed by prospective purchasers of homes, particularly after 1963, on the certainty of the continuation of Spadina. On this point too, equal reliance must have been placed by prospective purchasers of homes, after 1963, in the north-west sector of the community within reasonable reach of the Spadina as being a reasonable facility for downtown transportation. I have concluded from the evidence that to simply permit the Spadina to be left in its present state is unacceptable. The whole concept of the undertaking was not to treat the Spadina as a local arterial street or to satisfy the needs of the Yorkdale Shopping centre. The evidence was also crystal clear that the Spadina ought not to terminate at Eglinton Avenue. This, in the opinion of Mr. Cass, the Commissioner for Roads and Traffic for Metropolitan Toronto, would produce utter chaos. I also do not appreciate the humour of one of the professional witnesses in opposition that the vast unopened area between Lawrence Avenue and Eglinton Avenue might be converted into a parking lot.

It might be convenient at this time to comment on the lack of an official plan for Metropolitan Toronto. Most planners and this Board would agree that being deprived of an official plan which is a legal document is generally lamentable and should be discouraged. This is so, not only because it deprives citizen participation in planning their own future, but does not legally restrict a municipality from unfounded deviation in its long range plans for future development. This is so even if it has a plan which for the time being at least is being strictly adhered to, and is being used as a guide in the same manner as an official plan. It is not my intention to comment adversely on the lack of an official plan (which is not legally required) in Metropolitan Toronto. My only purpose in discussing this matter, is that one of the functions of an official plan, i.e. to give direction to future development, thus allowing the public to place some reliance on the objectives contained in the plan, was in fact, so far as the Spadina corridor is concerned, fully satisfied, without the existence of such plan. Even more, by analogizing with an official plan, the objectives of the plan were actually in the process of being implemented. In my opinion it would be a grave injustice if after reliance is placed on the Board's decision of 1963, and the public acts in reliance upon such decision, that now, those rights should be abrogated without recourse. Such citizens would not even be given the protection afforded to users of land who have taken from them their natural rights by the imposition of artificial restraints such as land zoning changes but nevertheless reserves to them, under *The Planning Act*, legal non-conforming rights.

When therefore it is argued that consideration should be given to the net cost of the Spadina after taking into account the obvious disadvantages as expressed by those in opposition, leaving a net debit balance, the weight of the disadvantages to those who have a right to the benefit might go a long way in creating a net credit.

Nevertheless, the proposal now before the Board has very important ramifications and it is intended now to consider other aspects of this case. Perhaps the die was cast

in 1963. If, however, the evidence disclosed that conditions today are so different, or the evidence so different as the Board believed in 1963, or perhaps the Board was in error, or that in fact the evidence of this hearing warrants it, then it may still be necessary in the interests of the common good to reject this application.

The principal purpose of the expressway as expressed by Mr. Cass is to supplement a serious deficiency in road capacity and manner of service, manifesting itself in excessive travel delay. Completion of the Spadina would result in relief to the arterial streets and lessen infiltration of traffic into residential streets. The accident rate would be reduced considerably by comparison with arterial streets. This witness testified that infiltration of traffic into residential streets is a cause of noise which would be partly eliminated with an expressway; slower traffic causes greater pollution. The design of the road and sound suppressants which would be installed would also help to overcome the noise problem. According to studies made by Cass, there is no indication that the introduction of major traffic facilities would have any impact on the downtown area. It is admitted that there would be a major disruption over a period of three or four years, particularly from St. Clair Avenue to Dupont Street.

The evidence of Mr. Wronski, Commissioner of Planning for the Metropolitan Planning Board must be considered. Exhibit C6 (A Planning Review and Appraisal) was prepared by the staff of the Metropolitan Toronto Planning Board in February, 1970, under his direction. The combined facility was included in the Metropolitan Plan 1966 and in the Official Plan of the City of Toronto and the Boroughs of York and North York. This report expresses a need for a downtown oriented expressway to serve the north-west section of Metropolitan Toronto, with a population of some 300,000 persons. The Spadina would complement other transportation facilities enabling 2,000,000 people to more adequately take advantage of the central area of Metropolitan Toronto. Traffic demands in the future will more than double and the proposed Spadina corridor is essential to provide needed traffic capacity. The alternative would be the widening of existing major arterial roads and "the number of dwellings and businesses displaced would be much larger and the general impact on the appearance and character of the neighbourhood considerably more severe".

This report recognizes that the Spadina project has a social effect inasmuch as 697 predominantly single family homes, 44 businesses and 1 industrial structure would be displaced. The patterns of mobility would not be seriously disrupted. The Spadina project, it is submitted, would be achieved at a relatively low social cost and little environmental impact. The Spadina is needed now, it is argued, and will function independently of any other proposed expressway or transportation system. Any other studies, including economic studies would not affect the views of this witness as to need. It was stressed that it is most difficult to influence the public as to any particular mode of transportation.

The Wronski views were largely supported by the evidence of R.M. Bremner, Commissioner of Public Works

for the City of Toronto, who stated that the proposed functional design of the expressway would work well and a cross-town expressway was unnecessary to achieve satisfactory results.

It was clear from the evidence furnished by Joseph Eakin, Commissioner of Finance and Treasurer of Metropolitan Toronto, that the municipality is financially competent to handle the proposed work. In the opinion of this witness, in estimating costs no consideration should be given to the factor of inflation because there is no certainty that inflation would continue and there would be practical complications if the capital works programme is based on an inflationary factor.

According to the evidence of Alan Voorhees, transportation and city planner, the proposed location of the project was proper and the facility needed to support the metropolitan policy for a strong central area. I do not intend to dwell on the cost benefit calculations which pointed to the economic soundness of the Spadina. In my opinion, even if part of the transportation system may not be paying its way, I fail to see how you might translate into money the value of the losing portion of the system when, for example, it might afford relief to the Yonge line congestion and be of benefit to the whole community rather than just the users of the proposed work. I do not believe it is necessary to cite other examples of benefits that the community might derive from a non-money profitable service. Mr. Voorhees also takes the position that there are two societies, one of which must be served by the automobile and the other by public transit. Some concern is expressed as to the social and environmental impact, but it is concluded that the Spadina is needed without the necessity of further studies.

The General Manager of Subway Construction for the Toronto Transit Commission estimated a saving of about \$20,000,000.00 by building the transit portion in conjunction with the road. The proposed alignment is operationally satisfactory and the rapid transit facility is needed to relieve pressure on the Yonge Street line, particularly after the northerly extension has been completed.

One could not help but be impressed with the professional talent, the fervour and concern expressed by a very large body of citizens opposing the undertaking.

Professor Murray, who spoke with some authority and with a background of training and experience, emphasized that transportation could force "the type of development that is wanted rather than transportation following development". It is submitted that it is therefore necessary to determine the kind of city that is wanted. The transit oriented system would best serve all economic classes. There is a tendency that after expressways are built and filled to capacity to resort once again to arterial streets and it will be risky to move ahead too quickly without knowing the impact of the lakefront development.

The evidence of Professor J. Diamond must be considered. This witness who is a professor in urban design and is on a university faculty for environmental studies stated that Toronto is unique in that the downtown area comprises healthy residential districts and very wide mixed land uses. The Spadina would in his opinion dominate large

neighbourhoods. The noise factor would be difficult to solve and the beautiful ravine system would be threatened if not destroyed.

Perhaps one of the strongest professional opponents to the Spadina was David Nowlan, a professor of economics with a good background to comment on the Spadina. According to this witness, public transit would have the greatest performance criteria and the returns after evaluating the Spadina are too low to justify the facility as being one of top priority. As a transportation planner, he would recommend against the project even if part of it has been completed.

Mrs. Jane Jacobs, whose background and qualifications on urban planning is evidenced by her many writings and who often acts as consultant in urban matters quarrelled with the transit alignment and expressed great anxiety that the variety of stable and very much loved neighbourhoods in the central area would be destroyed. This witness movingly painted a picture of the necessity to abandon the expressway to preserve what Toronto so uniquely has.

Many other citizens came forward to present their views. There is fear of high rise development following the Spadina construction ruining pleasant residential neighbourhoods; some fear expropriation; others were concerned that traffic exiting from the expressway would infiltrate the residential areas; others expressed concern as to adverse effects on schools. Ravines came in for special concern. Many favoured discontinuance of the project; others thought the whole transportation system should be reviewed.

There was some apprehension expressed by J. Fensterstock, Director of Program Planning of the Department of Air Resources residing in New Jersey, as to the possible carbon monoxide level that would be generated by traffic, which might even affect the transit facility in the median strip. These doubts were, in my opinion, resolved by Dr. M. Fitch, employed by the Provincial Department of Health, with considerable experience in environmental medicine. This witness was, I believe, more qualified than Mr. Fensterstock to evaluate the effect of carbon monoxide on the human system. The evidence of Dr. Fitch also threw some doubt on the Fensterstock presentation in the comparison made between conditions of what was described as a similar expressway in New York and the Spadina. This would affect the conclusions drawn by Fensterstock. The evidence of Louis Shenfield, Chief of Air Quality of the Meteorological Section of the Ontario Air Management Branch, reinforced the evidence of Dr. Fitch. It was suggested that because of differences in air content, topography and building structures, New York measurements should not be applicable to the Spadina. In any event it was expected that the pollutants generated would be within the limits set by provincial regulations. In addition, governmental controls now in force and further prohibitions expected to be enacted would help to inhibit vehicle emanated pollutants.

In coming to a final conclusion it is necessary to brush aside some of the human and emotional factors which governed the position taken by a large body of the opposition. It is understandable that no one wants to be

uprooted or even suffer a change in a way of life, which is disappearing only too quickly. The majority of the objectors who reside in what has been referred to as the Annex have particular reason for concern (perhaps groundless in part). There is a fear that desirable unique neighbourhoods will be disrupted. The location of the annex is proximate to the vital downtown core of the city. It is understandable that benefiting from both worlds, the annex residents would not want to be deprived of their accustomed environment and, indeed, they should not, except in the public interest. The loss of enjoyment of the Nordheimer and other ravines should not and was not accepted lightly; it becomes excusable only in context with the greater concern for the general public welfare.

It is suggested that the Board when making its determination should be governed by the face of Toronto it is desired to achieve. I cannot agree. This is precisely the function of council. It is also the function of council, in its wisdom, to determine how much consideration should be given to automobile use in arriving at an acceptable transportation system. Council had the benefit of and gave effect to recommendations of traffic, planning and other experts. There is no question of *some* transportation need for the present and even a greater need for the future. The proposed Spadina project would satisfy such present need and steps no doubt will be taken to deal with future needs. As I understand it, the Board should only be satisfied that due consideration has been given to the problem of transportation. This would include the scheme with all its possibilities and consequences. It is not necessary that the Board project itself into the position of council to determine the appropriateness of the intended works. To do so would, in my opinion, be a usurpation of the intended legislative powers conferred on council. There is, of course, a duty on this Board to protect minority rights, but not at the expense of majority interests. Surely it is axiomatic that when there is a conflict between minority and majority interests, the plan which favours the common weal is paramount. Having arrived at the conclusion that the application is justified under all the circumstances and since I am satisfied that the applicant has fulfilled all the prerequisites of Section 62 of *The Ontario Municipal Board Act*, I would approve the application.

There are conditions which Mr. McGuire has dealt with in his decision to which I subscribe.

The intent of this decision is that the application for a review should be dismissed.

R.M. McGuire: As indicated in the style of cause, this is an application to the Board for approval of a capital expenditure which represents an additional sum to what had already been approved on August 7, 1963.

The application is for the approval of the extension of the limit of the William R. Allen (Spadina) Expressway to Bancroft Avenue, the additional expenditure of the sum of \$66,320,000.00, and the expenditure of the sum of \$26,000,000.00 related to the rapid transit facilities to be now constructed.

The original application of the Municipality of Metropolitan Toronto in 1963 was for the construction of the expressway extending to Bloor Street and for the approval of the sum of \$65,980,000.00 (\$7,700,000.00 had been approved earlier). The total cost of the expressway portion is estimated at \$142,000,000.00 and the portion that is being requested now for the rapid transit system is \$26,000,000.00 out of a total estimated \$95,000,000.00.

Before the hearing on the merits of this application was commenced, there were a number of preliminary motions which were heard by the Board. In August of 1970, a notice of motion was filed with the Board requesting a review of the 1963 Board decision. In September, before this motion could be considered separately, counsel on behalf of Metropolitan Toronto filed an application for the additional approval as indicated in the subject application. On the return of the first motion, which was to determine the pleadings that might be directed by the Board for the better defining of the issues, the application for the review was never formally determined and it would appear that this motion was not pursued when it became clear that in the application of Metropolitan Toronto the issues permitted to be developed would be wide enough to allow the scope desired by those in opposition. Pleadings were directed by the Board and these have in fact been filed, and have helped to define the issues between the parties. In addition to the pleadings of Metropolitan Toronto and opponents represented by counsel, the Borough of York filed pleadings in support of the application and the Corporation of the City of Toronto filed pleadings indicating that they were going to take a neutral position in the matter, which posture was maintained throughout the hearing.

There were further motions with respect to discovery and production of documents, the early accomplishment of same being made possible by the co-operation of all counsel so that there could be the best preparation of the case commensurate with the reasonable expediting of the proceedings. There was also a motion by counsel on behalf of those in opposition with respect to any jurisdictional limitations on this Board, but it was agreed by counsel on behalf of Metropolitan Toronto that in fact the Board had the legal jurisdiction to deal with the issues in question desired to be raised by those in opposition.

In the usual circumstances of an application to the Board for the approval of an additional sum of money, over

and above what was originally approved, the question of necessity and expediency is usually not reviewed, but only the question as to the capabilities of the municipality to bear the additional debt burden and the taxpayer to bear the additional tax levy. In the present circumstances the Board decided that it would be appropriate not to limit itself to these matters because of the pending application for review, as well as the fact that there was more than the additional sum of money for the expressway that is involved, namely, the extension of the facility from Bloor to Bancroft Avenue and the additional sum of money for the rapid transit facility.

It would perhaps be appropriate to examine some of the changes from the 1963 application to the present one, and what has occurred relative to this project between those years. There was filed with the Board maps showing both the 1963 and 1970 projects which graphically show the changes particularly from Eglinton South. There were a number of design changes made being approximately fourteen in number, such as the introduction of the Cedarvale Tunnel, the tunnel north of St. Clair, the treatment of the Nordheimer Ravine and Casa Loma area, the provision for the Davenport ramps and the considerable change with respect to Spadina Road and the extension of the facility south to Bancroft Avenue from Bloor.

Practically all of the right-of-way has been acquired north of Eglinton Avenue. All the designing changes are set out in more particular detail in Exhibit C5 filed, the Functional Design Report South From Eglinton Avenue prepared by the Metropolitan Toronto Roads and Traffic Department.

There are also maps filed showing the construction that had occurred to date which is basically the completion of the expressway to Lawrence, practically all of the work to Eglinton Avenue except for the paving and the commencement of work in the Cedarvale Tunnel south of Eglinton Avenue. As well, there was substantial work on storm sewer construction undertaken relative to the expressway. There was approximately \$6,500,000.00 spent on the construction from Lawrence to Eglinton and \$300,000.00 south of Eglinton.

There were also maps filed indicating the extent of acquisition of the right-of-way which represents the acquisition of 539 properties out of a total of 769 required. The maps show that many of the required properties have been acquired between Eglinton and St. Clair, that a few have also been acquired all the way down to Bloor Street.

Also subsequent to the last Board hearing, agreement had been entered into between Metropolitan Toronto and the Province of Ontario through Department of Highways which agreement is filed as Exhibit C10. This agreement, inter alia, spells out the commitments of the parties in respect of the interchange at the Spadina Expressway and Highway 401, and it is Metro's obligation to construct the expressway to Lawrence Avenue. A letter from the Department of Highways filed as Exhibit C9, clearly indicates that the full interchange at Spadina is in lieu of ones at the Bathurst Avenue and Dufferin Avenue intersections on the basis of the Spadina Expressway extending to Bloor. The Murray-Jones Report (Exhibit C41) also clearly expresses at page 31 the understanding in 1961 in this respect. To date the Spadina Expressway

facilities are open from Wilson Heights, north of Highway 401 to Lawrence Avenue, and there has been no new work commenced on the project since September of 1969. The amount of money that has been spent to date in connection with the expressway and rapid transit project is approximately \$68,000,000.00.

Before dealing with the evidence and the issues that were developed at the hearing in connection with this application, it might not be amiss to spend some time considering the roles of the Metropolitan Toronto Council, the interested citizens, and this Board in this application. Upon confederation, under The British North America Act, the powers relative to municipal government was given to the provincial governments. The provincial government, in turn, in its wisdom, decided that many matters could be dealt with more effectively at the local level and therefore established the form of local government which over the years has been changed in response to altering circumstances. In 1953 in response to the inability of the member municipalities of the greater Toronto area to resolve some of the problems of wider community nature, the Province decided to create a metropolitan form of government, and gave it certain responsibilities and powers, one of them being for laying out, etc., of roads as part of the metropolitan roads system. As already indicated, local government only has those powers that are conferred upon it and to the extent that it is conferred upon it by the Province. In these circumstances the senior level of government has decided that it would not give unfettered powers to local government throughout Ontario for the expenditures of money requiring the borrowing of moneys beyond the lifetime of council, and that the approval of this Board would be required in those circumstances. If the Municipality had the capacity to undertake the work without the borrowing of money, the Board's approval would not be required for the undertaking. But again this alternative might pose other problems.

The relevant authority of the Board is contained in Section 64 of *The Ontario Municipal Board Act*, which states as follows:

" 64.-(1) Notwithstanding the provisions of any general or special Act, a municipality shall not,
(a) authorize; or
(b) exercise any of its powers to proceed with; or
(c) provide any moneys for,
any undertaking, work, project, scheme, act, matter or thing, the cost or any portion of the cost of which is to be,
(d) raised in a subsequent year or years; or
(e) provided by the issue of debentures,
until the approval of the Board has first been obtained."

Section 62 of the same Act states:

" 62. The Board, upon any application of a municipality for approval of the exercise by a municipality of any of its powers, or of the incurring of any debt, or of the issue of any debentures, or of

any by-law, shall, before approving the same, make such inquiry into the nature of the power sought to be exercised or undertaken that is proposed to be or has been proceeded with, the necessity or expediency of the same, the financial position and obligations of the municipality, the burden of taxation upon the ratepayers and into all other relative matters, as in the opinion of the Board may appear to be necessary or expedient."

The Act goes on further to indicate that where there are objections filed, the Board should hold a public hearing for the purpose of enquiring into the merits of the matter and hearing any objection that any person may desire to bring to the attention of the Board.

The Board is also a creature of the Provincial Government and carries out the responsibilities, within the powers given, that are entrusted to it as indicated in the pertinent legislation. In matters of this kind, the Board is acting as an arm of the executive branch of the Provincial Government. A clear indication of the role of administrative tribunals in matters of this nature are clearly set out by the Chairman of this Board in a decision recently rendered in the Board's File P. 9239-69.

One issue underlying the proceedings was who should have the final determination of the policy for Metropolitan Toronto, the elective representatives or the interested citizen who expresses opposition to the project. The citizens, who either appeared individually or as representative of groups, indicate two different forms of the opposition, the first being those more directly affected in the neighbourhoods in the path of the proposed expressway and rapid transit facilities, and those who took a broader view of the matter asserting that the proposal was not in the best interest of all of the people of Metropolitan Toronto.

Obviously by the relevant legislation, the Metropolitan Council has been given decision-making powers to proceed with the application subject to the approval of this Board as already indicated. The electors of the Metropolitan area have presumably reposed their trust in the incumbents and can withdraw or sustain this trust at election time. The citizen, either as an individual or as a group, has no such legal status but by tradition, and I think in the interest of good government, they have the right as interested ratepayers to express their views in hopes that it will affect the decision making process. Citizens, whether individually or by groups representative of a community or a specific area of concern, have an ever enlarging role to play in our democratic process, particularly on a local level where the action of a municipality often has a very direct effect upon their lives. That they should be concerned is understandable and that they have an opportunity to express this concern should be facilitated. The best assurance that criticism will take a constructive form is to ensure that the public is kept as well informed as possible, and to provide the lines of communication whereby these thoughts can be expressed so that the elected decision-making authorities can be aware of all the community needs and concerns, and weigh them in a reasoned manner in arriving at a decision. But, of

course, the right to advise cannot be interpreted as the right to supplant the decision-making body as the recognized political formation in our society, or otherwise chaos would result, and the best motivated persons should not want that to occur.

The Board has a role to play in this as well. It can provide the forum to ensure that the interested citizens have an opportunity to express their views and that minority groups' interests are being adequately considered. The Board should make all reasonable enquiries necessary to ascertain that the decision of the council rests upon reasonably sure foundations, and it is also the burden of this Board to ensure that the opposition to the project also rests upon a reasonable basis. There is no legal onus or burden of proof cast upon the parties in the legal sense of the word. It is not strictly an adversary proceeding, but one in which the overriding principle must be of what is in the public interest as well as it can be interpreted at an impartial hearing. The Board in the exercise of its powers must not lightly interfere with the opinion of council because one of the potential results could be to wipe out much of the good the system may encourage. It could make the attainment of political objects too remote and their attainment too uncertain.

It is with the above thoughts in mind that I now direct my attention to the issues that were developed at the hearing.

Counsel on behalf of those in opposition have invited the Board to treat the subject application as a new application and not just an extension of an earlier one because it is submitted that there had been a significant change in circumstances from 1963 until today. In support of this it is stated that the cost of the enterprise has increased substantially; that the physical characteristics of the project in scale, appearance and impact were not evident to the public until recently; that there had been an increase in knowledge and consequent anxiety for the environment; that the experience of expressways in other communities has aroused apprehension; and that there had been considerable advances in connection with the planning for transportation facilities which might now be taken into consideration.

I find it very difficult to make this hurdle and treat this as a new application as invited, although to treat it as an extension of an earlier application is not such an overriding factor so as to determine my decision. As already indicated there have been considerable costs already incurred with respect to construction and land acquisition, with its attendant disruption and displacement of people and properties. There have been commitments made by the municipal government, development planned, and land purchases made along and near the path of the expressway that has probably occurred on the premise that the expressway will be constructed after the initial approval by this Board. If the project is not proceeded with to permit the further studies as suggested, there will be a continued uncertainty to the residents in the path of this facility. There will also be a continued holding in abeyance of needed street improvements which are pending the construction of the expressway. There have already been

certain clear indications of local traffic infiltration resulting by the present termination of the expressway at Lawrence Avenue.

If the project is aborted there have been suggestions as to where it should be terminated. It has been suggested it should be at Lawrence, Eglinton and St. Clair Avenues. It is asserted by the Commissioner of Roads and Traffic of Metropolitan Toronto that if the expressway is ended at Eglinton Avenue (where it is now almost completed) it would greatly accentuate the Cedarvale area traffic problems, and that he could not recommend that this be the termination point. Counsel for the Borough of York was also quite concerned with this possible terminus, as well as counsel engaged by the Cedarvale Ratepayers' Association who appeared and represented their interests. The traffic counts on the portion already completed between Highway 401 and Lawrence indicates that there is relatively heavy use of this short leg of the expressway, and that there had been already some difficulties encountered with respect to the turning movements at Lawrence. Hans Blumenfelt was the only one that suggested that the expressway portion be terminated at St. Clair Avenue pending a review of the rest of the expressway further south. There is no question in my mind that if the expressway is aborted at Eglinton there will be further interference with the normal traffic flow in the residential areas to the south.

A number of studies had been undertaken and reports made, not only by the staff of Metropolitan Toronto, but by independent consultants engaged both by Metropolitan Toronto and the Province of Ontario over the last number of years and which reports were filed as exhibits at the hearing and extensive references were made thereto. Although it is rather difficult to try to arrive at a consensus of what the reports state and certainly no good purpose would be served by quoting extensively from them, some general conclusions might be drawn from them. It would appear that the metropolitan goal is to ensure that there be a strong and vibrant central core, at the same time maintaining a number of stable residential communities therein. It appears that even those in opposition agree that the elected representatives and their advisers have been successful in this regard to date. Various studies indicate that there will be a greater relative growth with respect to residential, commercial and industrial development in the suburban periphery, although there will be growth in absolute terms in the central core. It was asserted that Toronto is indeed very fortunate in that it has been able to have a mixed land use and with nodes of development throughout the area which provides choices of residential environment. It was suggested by some that Toronto has not followed the usual patterns of growth as in many American cities where the central area has been developed as the working core and the surrounding area used as a dormitory with radial and ring expressways giving ingress and egress thereto. The reports suggest that there will be relatively greater traffic movements in the periphery and across town than there will be in the central business district as a result of this peripheral growth. In practically all of the reports, whether from the staff of local government or from independent consultants, the Spadina Expressway and rapid transit system has been given the top

priority.

The Spadina Expressway has been part of the proposed transportation facilities of Metropolitan Toronto since its inception and even being considered prior to that as being a necessary facility for the movement of people and goods within the community. In 1956 the rapid transit feature was incorporated into the proposed transportation network for the metropolitan area. Much of the information which formed the basis of the studies is from a survey undertaken in 1956 and home interviews undertaken in 1964 with respect to travel patterns of the people of Metropolitan Toronto.

One of the studies is the Metropolitan Toronto and Region Transportation Study (MTARTS) which is a forecast of the 1980 travel demand of Metropolitan Toronto and surrounding region for the 7:00 a.m. to 9:00 a.m. period. This was performed by the independent consultants, Kates, Peat, Marwick & Co. in 1967 for the Provincial Government. There was no additional metropolitan expressway systems under consideration in this study, except the Spadina Expressway and the extension of the Gardiner East, i.e. it did not include such expressways as the extension of Highway 400, Crosstown, the Richview. The other reports do include these expressways in their considerations.

A further report called the Central Area Transportation Study of March, 1968, was also prepared by independent consultants, Read, Voorhees & Associates Limited. It concluded that the Spadina Expressway had first priority and should be undertaken at the same time as the construction of the Scarborough Expressway to serve a dense narrow corridor and would not be significantly affected by other corridors. It stated that it will act as a distributor on the west side of the core and as a high capacity spur to downtown. The report further stated that it would require a very strong east-west oriented arterial system to divert the traffic destined to the core, but questioned the proposed Crosstown Expressway's ability to serve this purpose.

The most recent report that was filed was the 1995 Travel Demand Study performed also by Kates, Peat, Marwick & Co., and Mr. McDougall, the person responsible for this report, gave testimony at the hearing. He said that this report represented only the first portion of a continuing study of the transportation system of Metropolitan Toronto and that this was only a preliminary report. It would appear that this report, although received in March of 1970, had not yet been analyzed beyond the staff of the Metropolitan Toronto Planning Board.

One of the main issues in respect to this application is the question of need and to whom the benefits will accrue if the expressway and rapid transit system are constructed. In the 1963 decision the Board clearly came to the conclusion that the necessity for the expressway had been clearly established by the evidence, and went further to state that the construction of same was an urgent necessity. The testimony in support of the application was that the expressway would in general supplement an existing and anticipated serious deficiency in the road capacity and service. A contour chart of time and distance travelled filed as Exhibit C21 indicates that in the Spadina corridor one

cannot travel as far in a given time as in most of the other directions from the central core. It is submitted that this expressway would relieve some of the excessive interference with adjacent land use and Exhibit C22 (a flow diagram) indicates that there is relief to parallel arteries to varying degrees that has been observed when expressways are constructed in the Metropolitan area. It is considered that an expressway would reduce the undesirable infiltration of through traffic on residential streets and Exhibits C23 and C24 are illustrations of this in the Cedarvale and Poplar Plains area, respectively. It is also submitted that it would reduce accident rates. Although not with as much assurance it is suggested that there will be two additional benefits, in the reduction of noise, since noise abatement structures are possible to construct on expressways and not on land use roads, and that there should be a reduction in air pollution because faster moving vehicles emit less noxious gases.

Mr. Bremner, who is the author of the Report on Functional Design, April 1970, and who is the Commissioner of Public Works and City Engineer for the City of Toronto, supported the application, being of the opinion that the expressway operation would reduce the traffic on residential streets, improve the operation of surface transit, and facilitate the movement of traffic. He considered that there was a pressing need for the construction of the high capacity controlled access facility in the north-west sector in the metropolitan area to relieve the traffic congestion which exists in this area. It was his opinion that the Spadina Expressway was definitely needed as soon as possible because the arterial streets on the Spadina corridor are now congested and that there is already an observable detrimental effect on the residential streets. He filed a number of photographs to indicate the congestion on the residential streets in the Spadina corridor. Mr. McDougall, the author of the 1995 Travel Demand Study, even although he suggested that the rate of traffic movement would be undesirably low in 1995, was still of the opinion that the Spadina Expressway had the highest priority and should be constructed now to meet traffic demands, and that there would be traffic congestion in 1995 even if all the facilities were constructed as envisaged in the present Metropolitan transportation system. Another well qualified and experienced transportation consultant, Mr. Voorhees, made further analysis to check his opinion that the Spadina was a needed facility and concluded that it gave a substantial saving in total road travel miles to show that well located to serve a large number of travel trips, and that the traffic volumes were twice that of capacity if under no restraint over a two hour peak period. He concluded that the Spadina Expressway was an essential link in the transportation system of Metropolitan Toronto.

Mr. Voorhees stated that it was his opinion that the expressway would not only give time and distance saving, reduce accidents, but also improve access to the downtown and would relieve bottlenecks presently in the system. He considered that the existence of the expressway and rapid transit system would support the metropolitan policy for strong central core, although the transit would have a greater impact in this respect. He was of the opinion that these facilities would provide greater accessibility for people in this quarter, strengthen the area as a place to live,

and would service institutions, industries and commerce in the area.

The metropolitan plan of the Metropolitan Toronto Planning Area filed as Exhibit No. 31A and 31B was on December 15, 1966, adopted by the Metropolitan Council "not as an official plan" within the meaning of *The Planning Act*, but instead as a statement of the policy of metropolitan corporations for the planning of future works and services, and as a guide for future development in the Metropolitan Toronto Planning Area. An examination of this document shows that it is quite comprehensive in nature. It sets out the goals with respect to metro's major transportation system facilities and the criteria for public transportation. The Spadina Expressway and rapid transit facilities were first incorporated in the draft Official Plan in 1959. All of the procedures with respect to the adoption of an official plan were undertaken except the final step of having it referred to the Minister of Municipal Affairs for approval.

The Spadina Expressway and rapid transit facilities were incorporated into the Official Plan of the City of Toronto, the Borough of North York as well as the Borough of York, and although these local governments do not have the jurisdiction with respect to metropolitan transportation facilities, they are acting as a guide for land use development in the boroughs in relation thereto.

It is unfortunate that the Metropolitan Council has not adopted the plan as required by *The Planning Act*. Many of the issues developed by the opposition would be untenable if in fact this had been approved. In the creation of regional municipalities in the recent past, the legislation has made it directory that an official plan be adopted, and not just the authority to do so as indicated in the *Municipality of Metropolitan Toronto Act*. If it is properly adopted it can act as a positive force for the orderly development of the works, services and land use within the metropolitan planning area, and also to prevent some of the negative aspects that have in the past been so dramatically demonstrated.

Some of the financial aspects of the application were seriously questioned by the opposition, and the Board received rather extensive explanation of the financial considerations from Mr. Eakin, the Metropolitan Commissioner of Finance and Treasurer. He filed many statements which all emphasize that he had an excellent grasp of the subject and considered it his job to keep Metropolitan Toronto in good financial condition. No serious issue is taken that the metropolitan corporation does not have the financial capacity to undertake the proposed works, and there was no evidence introduced to indicate that there will be an undue burden of taxation upon the ratepayers as a result of these expenditures if the application is approved.

Two issues developed were the adequacy of the cost estimates and the reason for the delay in coming to the Board for approval of the additional financial expenditure. It was explained that the reasons for the much higher cost from 1963 to the present was because of the inflationary trends which were reflected by the increase in construction

cost in 1966 to 1968, particularly with respect to the south trunk drain increasing from \$1,500,000.00 to \$13,500,000.00, and even more so the increase in land costs that had sky-rocketed between those dates. The new Expropriation Act was said to be one of the main reasons why there is increased compensation costs incidental to the acquisition of the property in the path of the expressway. There were also a number of additional starters which were added to the project, and the fourteen additional items are indicated in Exhibit C5.

Neither the first estimates or the present estimates consider inflationary trends. Mr. Eakin explained that he considered it inappropriate for such cost estimates to include inflation. He explained that there was no certainty as to the continuation of inflationary factors; that it was difficult to ascertain the rate of inflation; and that if assumed there should be an inflation factor, it should be uniform for all projects and business of the municipality. He considered that the annual review of the capital works programme provided a continuing opportunity to all officials to reassess the costs not only with respect to inflation, but to base it upon the record of contracts awarded and the improvement of design and technical matters giving a more realistic approach to the problem. Certainly the experience with the south trunk drain indicates that it is a very hazardous exercise, particularly when the work is projected sometime in the future and the design is often substantially altered from what was originally planned. Mr. Eakin said that he accepted without question the departmental estimates and that he was really unaware of whether they included an item for increased costs. Although this particular aspect of the application might give some concern, it is, in my opinion, not a prime factor for this Board to consider in accepting or rejecting the application.

The increasing cost estimates were included in the metropolitan capital budget commencing in the year 1967 and were first recommended to council for an increased expenditure in August, 1968. It was explained that this matter, and eventually the project itself, was placed in abeyance because the Metropolitan Council was very seriously questioning the advisability of continuing with the Spadina Expressway and was making further studies in this respect. There was also a question of the planning for the eastern extension of the Gardiner Expressway. The design of the Spadina Expressway, particularly at the southerly end, had not in fact been settled and there was increased vocal opposition from the ratepayers which resulted in all new works being stopped in September of 1969 to allow time for a full reconsideration. During this period of time an opportunity was provided to interested citizens to present their submissions in opposition to and in support of the application. After hearing from the public, the metropolitan council decided to proceed with the project and made application to the Board for the additional expenditure in September of 1970.

One might now properly deal with the issues that were developed at the hearing in connection with the rapid transit system. There was only limited opposition with respect to this alignment, primarily from Mrs. Jacobs who

asserted that it was in the wrong position and should be separated from the expressway and placed along Bathurst Street. I accept this evidence of the experts in support of the application and consider that the alignment of the rapid transit system is appropriate in the circumstance.

There were a number of reasons given as to why the Spadina Rapid Transit System facilities were required. They would provide a time saving to the user; increase the reliability and comfort of the transit service; make more efficient utilization of the University Avenue line; and it would grant relief to the Yonge Street line which is presently approaching maximum design capacity.

The opposition submitted that there should be greater emphasis placed on the rapid transit system in Metropolitan Toronto because it provided a better method of meeting travel demands. They asserted that modal split used by metropolitan planners presumed a choice by all levels of society not taking into account those without travel options. It was considered by them that the "balance system" as indicated in the metropolitan transportation plan was oriented to the motorways. Further, there was no time-table provided for the completion of the Spadina Rapid Transit System.

I find from the evidence and reports filed that expressways and public transit systems are not basically competitive but complementary, although there is some overlapping. They serve different travel needs. The public transit need is oriented to serve the trips to and from the central business district whereas the peripheral and crosstown travel demand will require an arterial and expressway network. The public transit system is essentially for peak hour demands whereas expressways are for the travel demands throughout the day. This was repeatedly emphasized. Peak figures are basically useful to determine capacity and impact. It would require a significant change in the convenience and attractiveness of the public transit system to increase the transit usage. Many positive steps would have to be undertaken not only to improve the public transit system but to decrease the desirability of travelling on the motorways, such as the limitations of parking lots and the substantial increasing of parking charges, and this all presumes an integrated transportation policy. Any possible conclusions that might be forthcoming in this respect would, of course, have to await the result of exhaustive analysis and then policy decisions by the appropriate authority.

Testimony was given that the rapid transit system could not be built for the \$95,000,000.00 cost estimate unless it was on the same alignment as the expressway. Mr. Paterson of the Toronto Transit Commission was of the opinion that below Eglinton Avenue a separated transit facility would cost \$15,000,000.00 to \$20,000,000.00 more, and that further consideration would have to be given to the transit alignment. It should be noted as well that provincial subsidization is 50 percent on all expressway work whereas rapid transit is subsidized to the same extent only in respect of right-of-way construction.

Testimony given indicated that the existing and proposed metropolitan transportation system is a "balanced system" in favour of rapid transit at least insofar as the mileage and financial picture is concerned within

Metropolitan Toronto. It appears that the present subway system is considered good within the area where the majority of lower income level live. In 1969 the Toronto Transit Commission Annual Report for the first time since 1961 demonstrated that there was a drop in transit riding. In 1969 a subway system origin-destination survey was undertaken to determine up-to-date travel patterns.

In the Kates, Peat, Marwick 1970 Report it was stated that the public transit system tested in the study provided a high level transit service for inbound trips to the core — 56 per cent on the modal split, but it was projected that the growth of the trips to the core for 1964 to 1995 would be only 46 per cent in contrast to the growth total trip making activity in the study area of 152 per cent. It was estimated that the growth in travel by transit to the core would therefore be modest. It is, of course, to be remembered that the term "public transit" is not synonymous with the public rapid transit and that there would be a substantial shift of the patrons to the more convenient facility.

There is one area on which I have not received adequate assurance in connection with the rapid transit facilities, and that is as to when this facility would be operational within Metropolitan Toronto. All of the reports and all of the testimony support the conclusion that it should be constructed simultaneously with the expressway, and that the transit facilities be in operation at the same time or even before the expressway facility. All the experts called in support of the application have classified it as first priority along with the expressway. The Toronto Transit Commission has expressed concern respecting the timing because of the Yonge Street overloading and further its early construction would allow for the continued and uninterrupted use of available expertise in subway construction. The Metropolitan Planning Board recommends that it be completed ahead of the subway.

It should, of course, be remembered that the dual alignment only extends to a point north of Bloor Street. Exhibit C20, a Transportation Committee Report from the Commissioner of Roads and Traffic of November 4, 1968, clearly points out some of the benefits to be derived from the early completion of this project. They are the earlier possible use of the transit facilities, the earlier return on moneys invested, an earlier resolution of the property problems for property owners along the route which would expedite rezoning and developing plans, and reduce years of disruption along the route, and finally, the earlier completion would reduce the effect of any inflation cost.

From the foregoing analysis of the benefits of the expressway, and rapid transit system, I am of the opinion that need has been established with respect to both components and that approval of the expressway portion be contingent on the transit facilities being operational at least no later than the expressway.

It is now necessary to examine whether the cost, measurable and otherwise, warrants the benefits that would accrue as indicated. It goes without saying that there will be a price to pay. Whether they assume such proportions as to

clearly put the benefits into serious question now is to be determined. These costs can be measured in terms of finance, disruption, dislocation and also on the very broad topic of social and environmental consequences.

It is suggested that the existence of this expressway would increase the amount of traffic coming downtown and thereby exacerbate the traffic congestion already being experienced. There is no question in my mind that there will be increased traffic in this corridor once the expressway is in operation, and probably traffic which is even now using routes outside the corridor would use these new facilities, but that does not mean the same as total increased traffic to the core.

Exhibits C2A and C2C are maps showing that motor vehicle and public transit demand was not significantly affected by the introduction of major expressways or rapid transit facilities in metropolitan area in the past. Mr. Bremner testified that figures of the traffic increase into the central core from 1955 to 1968 was 35 per cent which does not reflect the capacity of the Gardiner and Don Valley Expressways, thereby concluding that the expressway does not in itself bring in additional traffic.

The issue of air pollution was considered in some depth at the hearing. Those opposed submitted that automobiles using the expressway would cause pollution in excess of reasonable safety levels, and to support this contention they called a witness, Jack Fensterstal of the New York City Department of Air Resources. He explained the results of the New York City study (still unpublished) of carbon monoxide pollution carried out on depressed highways within that city. He stated that the observed carbon monoxide reading exceeded those standards recently utilized in his jurisdiction, but which had not yet received Federal approval.

Qualified and experienced officials in the service of the Ontario Government replied, explaining that any conclusions drawn from the study were not necessarily applicable to the Toronto situation, and that Ontario standards, which were not being exceeded, represented appropriate criteria on the basis of available knowledge. Further studies were authorized in this regard.

As indicated in the 1963 decision, there is a serious question as to whether or not the Board should be concerned with this issue, the problem already engaging the attention of the appropriate public authorities. In any event, it was not demonstrated to me in evidence that the increased air pollution beyond levels of safety will be a consequence of the use of this expressway.

The opponents also requested assurance that there would not be excessive noise emanating from these facilities so as to reduce some of the amenities to those properties abutting the work. Although the nature of the structures has not been determined, the Board was assured by the witnesses, called on behalf of the applicants, that noise abatement barriers could be constructed so as to reduce the noise to acceptable levels. I accept this evidence. It might be, of course, that such noise barriers might be more costly than presently now anticipated but it is a cost that will have to be borne by the majority to protect the minority.

The major area of concern in connection with this application is what might happen to the neighbourhoods through which the expressway and rapid transit facilities pass. A number of residents of the neighbourhoods came forward to express their concern, and I can fully appreciate the reason for their concern. There will be adverse social and environmental impact on these areas. They will never be quite the same as they were before these facilities are in place and being utilized. But I think that the advantages that will accrue to the greater community will outweigh the disadvantages to those in its path or proximity. The displacement of residents and reduction in the housing stock is relatively modest according to the experience of Mr. Voorhees. Expropriation legislation now applicable is among the most generous in any jurisdiction, and to the extent that dislocation and disruption can be measured in money, reimbursement can be made.

Disruption during construction occurs in any public project, whether for sewers, expressways or subways, etc. It is something that has to be endured, but it is incumbent upon the public authority to minimize its nature and duration as much as possible.

The expressway and rapid transit facilities were designed to minimize the impact upon the surrounding areas in the way of traffic infiltration and air and noise pollution. Many of the new design features incorporated into plans since 1963 are the result of representations to ensure that end.

There will be the inevitable loss of some of the natural features of the area, such as the ravines and parks, but it is the policy to replace any park facilities that are lost as a result of these projects. Much of the ravine land was not in the public domain. The testimony does not support the contention that there will be increased hazards to children crossing the expressway. I am satisfied that the evidence also demonstrates that there will probably be less local street traffic infiltration as a result of the expressway construction.

Many of the objectors expressed the fear that there would be a deterioration of their stable downtown residential neighbourhoods and the way of life now enjoyed therein. It has been stated that this is presently one of the advantages that Toronto enjoys in its mix of people in the downtown communities. This is not only relative to the expressway structure itself, but other pressures for redevelopment of the areas with higher density uses. That this expressway may act as a further basis for pressure is probably true. There are many other pressures for development, both from the public and private sector, which will inevitably be felt by many of these areas in the future. It is obviously still within the powers of the local government to control the manner in which any redevelopment will occur within these neighbourhoods. I do think that many of these fears are overstated and as Mrs. Jacobs pointed out, it takes a lot to destroy a community.

Concern was also expressed in connection with the Spadina Expressway being a precedent in the sense that other expressways such as the Crosstown and the Highway 400 Extension construction will therefore be inevitable.

Although the evidence indicates that at some time earlier such expressways were considered as an essential part of the metropolitan transportation system, the evidence at the hearing certainly displaces that premise. I am satisfied that the Spadina Expressway will work satisfactorily without undue impact on any of the abutting termini neighbourhoods because of its design restraint features and provisions for the Davenport ramp, and the other street improvements which will be constructed, many of them irrespective of this expressway approval. Both Messrs. Voorhees and McDougall seriously question the advisability of constructing these other expressways, and reconsideration should be undertaken in respect of them and be deleted from the metropolitan system if so decided.

The main thrust by those in opposition was that there should be a review of the Metropolitan Transportation System before the Spadina Expressway was extended, presumably in the expectation that a further analysis would indicate that it should not be continued, and that municipal efforts for a total transportation system would be otherwise directed. I think it would be presumptuous on the basis of the evidence before me to draw any conclusions as to what the results of that review might be. Many different studies were suggested from a cost benefit analysis of expressways vs. rapid transit which would take possibly a few months, to a complete re-examination of the goals of Metropolitan Toronto and a re-evaluation of all criteria to arrive at a new metropolitan transportation system, recognizing the travel needs of all, and the social and environmental consequences of any of the alternatives. This latter study would involve many disciplines, many years of work and the considerable expenditure of money.

I was impressed that this was a planning field that had been increasingly opening up within the last five years, and in future many more matters might be taken into consideration such as those indicated in Exhibit C68, the Report of the Task Force to the Governor of Massachusetts. The Metropolitan Planning Board recognizes that continuing studies are required, and the report (Exhibit C34) is the first part of this quinquennial review. Mr. McDougall in that report foreseeing undesirable levels of service, recommends further studies. The report, Design for Development — The Toronto Centred Region, envisages further studies. Mr. Voorhees orally and in his speech (Exhibit C101 — Land Use Transportation Studies at the Newcastle Upon Tyne Conference) indicated quite clearly the need for further evaluation of desired goals for urban development as created by social and economic changes. The criteria that should be considered is still evolving and will continue as more is known in this field.

But even Messrs. McDougall and Voorhees, who recognized the need for further studies and particularly the latter who certainly seriously questioned the advisability of expressways, still thought that the Spadina Expressway was so beneficial and basic to the Metropolitan Transportation System that it should be proceeded with now. I accept that evidence.

I do not feel that one additional piece of information such as the cost-benefit studies as proposed will be of much help by itself. Only a comprehensive review as suggested

would be of value and it is unreasonable for this project to be held in abeyance until that is finally determined many years hence. This transportation facility will meet the present needs of the total community.

I accept in general terms that road building programmes cannot be treated in isolation, but must be part of an integrated effort to direct metropolitan development in desired directions. Land use patterns and travel patterns are closely interrelated and each affects the other. But I am also of the opinion that the decision in connection with the subject application was not made in a vacuum by Metropolitan Council but after due consideration of the advice of its experts, with the awareness of the issues raised by ratepayers in opposition, and the consequences of their decision. Planning, whether for land use or transportation, is not an exact science as indicated by many of the opposing views of planners at the hearing.

A metropolitan community is a place for earning a livelihood. The existence of any urban area at a particular place and its growth or decline depend on the expansion or contraction of opportunities for employment and investment. The Toronto area appears to be a very attractive place for such growth and it is occurring very rapidly, particularly in the peripheral areas, although there was evidence of some large downtown projects including those of a residential nature.

I cannot accept that the only purpose that will be served by this expressway is "dump and drain". It will increasingly meet the travel demands of people using the facilities both ways. With the significant redistribution of economic activities from the central district, this expressway will be even more a needed facility in the future. The transportation of people and goods is basic to the life in a metropolitan area, and a well balanced system is required to meet the needs of the majority.

If the hearing should be properly interpreted as incorporating the hearing of review, as might be reasonably interpreted, I would dismiss the application for review for the same reasons as already enunciated.

Upon an examination of all the evidence, I am of the opinion that the application of Metropolitan Toronto should be approved upon two conditions:

1. That the Spadina Rapid Transit Facilities be operational no later than the Spadina Expressway facilities; and
2. To avoid some of the problems already encountered the Board be provided with progress reports relative to expenditures on a six monthly basis for the duration of the project.

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